UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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| IN RE: | . | Chapter 11 |
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| | . | Case No. 20-12168 (CSS) |
| TOWN SPORTS INTERNATIONAL, LLC, *et al.*, | . | |
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| | . | |
| | . | Courtroom No. 6 |
| | . | 824 Market Street |
| | . | Wilmington, Delaware 19801 |
| | . | |
| Defendant. | . | November 30, 2020 |
| . . . . . | . | 10:00 A.M. |

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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MATTERS GOING FORWARD:

Emergency Motion of the Ad Hoc Term Lender Group for (A) Injunctive Relief Pending Interpretation or (B) Amendment or Alteration of the Order (I) Authorizing the Sale of Substantially All of the Debtors Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Enter Into the Asset Purchase Agreement, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 710, 11/27/20]

**Ruling: 23**

(Proceedings commenced at 10:00 a.m.)

THE COURT: Good morning everybody. Very early good morning for those of you on the West Coast. We're here today in the Town Sports case with regard to the issue about a closing of the transaction.

I want to thank everyone who worked over the holiday weekend to provide briefs on the schedule I imposed. They were very helpful. I'm sure people worked harder and longer then they wanted to over the holiday weekend, but this is, obviously, an issue of great economic importance to the company and the parties in interest. So thank you all very, very much for doing that.

Before we get started today just a couple reminders. First and foremost, absolute rule is to mute your phones when you're not speaking. It's extremely disruptive to get background noise whether it's typing, or paper shuffling or the dog barking, et cetera. So, please do that.

Then a slightly less important rule is to try to remember to unmute your phones when you do speak. This happens relatively frequently and I do it all the time, certainly not a big deal, but try to remember to unmute your phones when you do speak.

All the other rules you guys all know. You have been on the CourtCall for eight months now. So, you do remember everything. The last thing, as I said, CourtCall,

the audio is not Zoom. The audio is by CourtCall. The Zoom audio has been muted and your ability to unmute yourself has been disabled. So, everything is on CourtCall.

We do have Zoom problems with some disruptions. I will try to address them, if I can't we will simply terminate the Zoom portion of the hearing and just go forward the good old fashioned way on telephone only.

With that I will -- it's not really the debtor's motion, but I will turn it over to the debtor to, sort of, set the table and then we will get started.

MS. GREENBLATT: Thank you, Your Honor. Nicole Greenblatt from Kirkland & Ellis on behalf of the debtors. Can you hear me okay?

THE COURT: Yes, ma'am.

MS. GREENBLATT: Great. As you said, it's not our motion. This is the term lender's motion. I will say we are, again, disappointed that there wasn't able to be a commercial resolution of this. You know, we are here on injunctive relief and, frankly, you know, if this was even a close call on the merits in terms of how to interpret your sale order that would be one thing. We don't think it is, but certainly in terms of the balance of harm it's kind of (indiscernible) from our perspective that his ability to close the sale would be incredibly detrimental to the debtors and all of their stakeholders.

It actually would not do any harm to the term lenders group. They are receiving some consideration in connection with the sale. They can continue to negotiate or litigate with their own selected joint venture partners, kind of, post-close as necessary. So, our overall perspective is simply that injunctive relief is not appropriate, but I will reserve argument until after Mr. Greenburg or someone at Gibson has had an opportunity to present their position.

THE COURT: Thank you, Ms. Greenblatt.

MR. BUCHBINDER: Your Honor, this is Dave Buchbinder. May I be heard briefly, Your Honor?

THE COURT: Yes, sir, Mr. Buchbinder.

MR. BUCHBINDER: Thank you, Your Honor. This is Dave Buchbinder on behalf of the Office of the United States Trustee.

I was out of my office on Friday and just reviewed the pleadings this morning. I do have one observation to make. To the extent that the motion seeks an injunction no adversary proceeding has been filed and Bankruptcy Rule of Procedure 7017 requires that an adversary proceeding be filed and the Third Circuit case of In Re Mansaray-Ruffin, 530 F.3d 230, 2008, requires that the matter proceed by way of adversary proceeding.

I want to make this observation to the court. I understand what the motion is about and I understand all the

consequences. I leave this observation to the court to the extent it desires to proceed this morning.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Buchbinder.

All right. I will turn it over to the term lenders. I don't know who is going to speak.

MS. MALONEY: Your Honor, this is Mary Beth Maloney and I am joined by my colleague, Scott Greenburg and Jason Goldstein on behalf of the ad hoc term of lenders.

First, in response to the U.S. Trustees comment regarding the filing of an adversary proceeding under Section 105 it's our understanding that an adversary proceeding is not necessary for the court to exercise its discretion to enter what we are requesting, which is merely a temporary injunction which, frankly, the parties have, essentially, agreed to by not having closed on Friday.

As I will address in my argument, we actually think this can be resolved by the court today with absolutely no intention of holding up the sales process, but we do think that it is essential that this sale go through subject to the terms of the sale order.

So, Your Honor, we really appreciate the opportunity to submit papers over the holiday and to be heard this morning. We would not have sought Your Honor's intervention lightly. We recognize that it's a burden on the

parties to have to address this when they had hoped to close on Friday, but the events that transpired immediately before the Thanksgiving holiday, including our being told on Monday, 11/23, that the parties would try to close the sale without the buyer credit bidding the acquired loans from the prepetition lenders as part of the purchase price under the APA or as a result of that we felt we had no other choice but to accept Your Honor's offer, made at the court conference on Wednesday, to seek a brief injunction of the closing t

Your Honor, the issue of whether the buyer must credit bid the acquired loans from the prepetition lenders to close this sale can be resolved in one of three ways.

First, the plain and unambiguous language of the sale order at Paragraph (x) authorizes the sale subject to loans from the prepetition lenders being credit bid by the buyer. We believe Your Honor can resolve that today.

Second, even if you do not view Paragraph (x) to unambiguously require that you close the loans from the prepetition lenders be credit bid by the buyer, the related transaction documents, that is the credit agreement and the security agreement, leave no doubt. Again, we believe Your Honor can look to these agreements today to resolve this and avoid any further delay at closing.

Last, if you think the contract, on its face, and the related transaction documents still leave doubt as to the

requirements to close the loans from the -- as to the requirement that to close the loans from the prepetition lenders be credit bid by the buyer it is appropriate to look to the understanding of the parties at the time they entered the sale order. Now we don't think that's necessary given the plain language of the agreements, but should the court believe it is necessary and appropriate to consider the evidence of the parties understanding we believe that could be achieved today based on the evidence submitted in support of our motion or in the alternative and with no interest in further delay of the close. We're open to scheduling a brief evidentiary hearing on an expedited timeframe.

Unless Your Honor wishes for me to proceed differently I would now turn to the first reason why the court should clarify that the sale order requires to close the loan from the prepetition lenders be credit bid by the buyer. That is the plain language of Paragraph (x) of the sale order.

Is that okay, Your Honor?

THE COURT: Yes.

MS. MALONEY: Jason, Mr. Goldstein, if you could pull-up -- Your Honor, if you will allow me I think it would be helpful for us all to look at the plain language of Paragraph (x) of the sales order. Would that be all right for my colleague, Jason Goldstein, to pull-up a slide

reflecting that language?

THE COURT: Yes. Just you have to give me a minute. I have to make him a co-host to have authority. So let me see if I can find him here. Where is he?

Did he drop off? I'm not seeing him.

MR. GOLDSTEIN: I'm here, Your Honor.

THE COURT: Oh, there you are. I got you now. You should be able to share your screen now.

MS. MALONEY: Thank you.

Paragraph (x) of the sale order unambiguously defines the credit bid consideration as $80 million dollars that will be credit bid, and that's the third to last line that is on your screen, and upon closing the prepetition lenders will be owners of the NewCo. That is the third line from the top on your screen.

The paragraph expressly contemplates that the loans under the credit agreement will be credit bid because the credit bid is owned by and has always been owned by the required lenders and the agent. So, for the buyer to have any right to it the credit bid must first be contributed to the buyer before the buyer is able to complete the purchase.

This is typical in a common sense way parties undertake these transactions. It would make no sense for the prepetition lenders to contribute $80 million dollars of the loans under the credit agreement in advance as the debtor's

seem to suggest they have done, and they have not. The credit bid was to be contributed at close in exchange for consideration in the form of debt and equity issued by the buyer.

Now if you could turn to the next slide, Mr. Goldstein, the sales order does not provide any direction to make the credit bid. It very easily could have included a direction to credit bid, but it did not. That also makes sense because Paragraph (x) of the sales order is definitional and not operational. It simply defines the credit bid consideration as it is contemplated under the APA's definition of the purchase price. That is that last sentence of Paragraph (x) which is up on your screen.

That last sentence confirms that the buyer must provide the credit bid consideration as part of the purchase price under the APA. It is obvious the buyer had failed to satisfy this condition for two reasons.

First, the buyer cannot include the credit bid in its purchase price because it does not own or control the credit bid. And the credit bid has not been contributed to the buyer. Only the agent who is controlled by the required lenders can exercise powers or take actions that bind all prepetition lenders. That is explicit under the credit agreement. The buyer does not now have and never has had any right or entitlement to credit bid the loan.

Second, the buyer does not even purport to have included the credit bid in its purchase price; far from it. They're paying $5 million dollars to fund closing costs and they believe that cash payment alone is sufficient to close. The debtors own objection and supporting declaration makes clear that this exchange, which is credit bid for consideration, has not yet occurred.

If you look to the Cleeton declaration at Paragraph 3 he states that they are prepared to close and "the cash purchase consideration be wired to the debtors." Unsurprisingly, there is no reference whatsoever to the credit bid which, again, under the APA is part of the purchase price. They don't even purport to show that the buyer had any right or ability to exercise the credit bid without the agent's authorization.

Second, under Paragraph 2 of the Cleeton declaration he makes clear that the equity in the company, specifically 200,000 shares that have not yet been conferred upon the prepetition lenders, hasn't been conferred because it cannot be until there is an exchange of consideration for the credit bid.

That leads me to the second reason why you should find in favor of the lender's position here. If Your Honor finds the sales order on its face requires further clarity the next step should be to look at the related documents.

That is specifically the credit agreement and the security agreement. Those documents are consistent with the ad hoc group's position that the payment of the credit bid is a closing condition that the buyer cannot satisfy because the buyer cannot pay the purchase price until the credit bid has been contributed by the agent acting at the direction of the required lenders in exchange for consideration.

Specifically, if you look and -- Mr. Goldstein, if you could turn to the next slide. Actually that is the asset purchase agreement in which total consideration is defined to include the credit bid and the purchase price is defined to include the credit bid. That, of course, is referenced in the sales order.

Now if we turn to Slide 5. And Slide 5 makes clear, under the asset purchase agreement, that as a condition to the obligations to close the buyer will deliver the purchase price which, pursuant to Section 2.3, includes the credit bid.

Then if we look the next slide, which is the credit agreement, at Section 12.10(a) of the credit agreement and it limits the actions that binds all prepetition lenders like credit bidding to the required lenders or the collateral agent. As a result, pursuant to Section 12.10 of the credit agreement and Section 7.1 of the security agreement the ad hoc term lender group has the power to direct the agent to

take action, exercise powers and seek to enforce the security agreement and other security documents, as they're defined in the security agreement, including to credit bid all or a portion of the loans outstanding under the credit agreement.

In fact, the ad hoc term lender group, as the required lenders and required secured creditors and the agent acting at the direction of the ad hoc term lender group, are the only party that can take actions or exercise powers like credit bidding to bind all of the prepetition lenders or to enforce the security agreement in each of the other documents. No party has this right including specifically the purchaser.

Now, Your Honor, I will not turn to part three which is to look beyond the terms. And if you want to take down the slides that's fine, Jason.

I will turn to my third argument unless Your Honor wishes to hear additional evidence outside the scope of the documents themselves, but suffice to say when this agreement was entered the sales order that was agreed to and the documents related to it including the asset purchase agreement reflected the notion that now debtors and Peak seem to have entirely rejected in an effort to close the sale quickly, but they reflected the notion that there would have to be a contribution of the credit bid in exchange for some consideration. That has not happened and, therefore, we

request that Your Honor clarify the sale order so that we can move forward with a consensual sale.

At this time, because Peak and the debtors have determined there is no such requirement to contribute the credit bid for the agents who acted our direction, they are going forward unilaterally. We believe there is the ability to have a consensual sale in which the term lenders will receive the consideration that they had specifically negotiated and contemplated under this deal, but that can only happen if Your Honor gives us the clarification today to allow us to move forward and to -- so that Peak and the debtors don't continue to act unilaterally.

Thank you, Your Honor.

MS. GREENBLATT: Your Honor, may I respond?

THE COURT: Yes.

MS. GREENBLATT: Thank you. Nicole Greenblatt from Kirkland & Ellis on behalf of the debtors.

A couple of things, Your Honor. So, obviously, our position is that the sale order is not ambiguous and it is clear. What Paragraph (x) does is say a couple of things.

One is that it says NewCo was formed and it was formed on behalf of all prepetition lenders. That is the direct lender control that the ad hoc lender group had was used to direct the credit bid. Ms. Maloney's argument, you know, seem to ignore the intervening process where there was

an auction held, there was a NewCo formed and a sale order approved that from our perspective completely trumps any prior prepetition direct lender control over the credit agreement.

So, they directed the credit bid in connection with forming that entity. It defines the credit bid consideration that was contributed and it says that the buyers agreed to contribute it and then it directs, by the court, pursuant to the sale order which, again, we believe trumps any prior prepetition agreement that the agent can do whatever is necessary because the asset purchase agreement was already approved. There were no objections raised to this order and we don't think it's appropriate to re-litigate it at this time. There is nothing to clarify. You know, Your Honor would simply be rewriting it.

You know, I think lastly, Your Honor, we're sympathetic and we understand that the lenders are frustrated and dissatisfied with what they're getting out of NewCo, but with all of the issues cited by the ad hoc lender group there is nothing we can do to solve the problem of their ongoing dispute. Right, this is a non-debtor third-party dispute about what consideration they should be entitled to in the NewCo capital structure.

It's not the case that they're not being given consideration. The requirement in the sale order and in the

APA is that this NewCo entity will be co-owned by the sponsor and the prepetition lenders, again, for the benefit of all prepetition lenders, not just this ad hoc group.

We have a declaration on file at Docket 713 from a representative of the buyer representing that they have all of the corporate authority necessary for the buyer to make the reps in the asset purchase agreement that they have sufficient wherewithal to close and to fund ongoing commitments. Again, this is supported by the debtor, the credits committee, the buyer and the ad hoc lender group is saying stop the sale, but they're not giving us a solution. There is nothing that the court can do to solve for the problem that they have with their co-investor. So, this has to be dealt with after the fact.

The alternative to the sale is likely an immediate conversion of these cases to Chapter 7 to the detriment of everyone including the ad hoc group where they will not only get none of their equity consideration, but likely less. So, again, this attitude that we're getting a zero, everyone should go down with us, that is simply not in the best interest of these cases. That is not consistent with the objectives of the bankruptcy code. Again, because there is no solution that we can craft for their problem the debtors are simply struggling to understand how we should hold a sale up over this issue.

So, from our perspective, Your Honor, your sale order is crystal clear, it trumps the prior lender, it approved the APA and there is simply no condition in any of those documents that there be a meeting of the minds between the lenders and the sponsor with respect to take back debt and equity. There is a requirement that they co-own the business. It's been represented that they will have ownership stake in the business. If they're getting consideration in NewCo how could it be for any reason other than that, that they contributed the credit bid. There is no other consideration being put on the table by the ad hoc lender group.

So, with that, Your Honor, we respectfully request that injunctive relief is simply not appropriate and there is no basis on the merits, it would harm the debtors, their estates and all of the parties of interest in these cases. We request that it be overruled.

THE COURT: Okay. Thank you, Ms. Greenblatt.

Does anyone else wish to be heard before I turn it over for reply?

(No verbal response)

THE COURT: Okay. I did get a written response from the committee which I have read. I will turn it --

(Phone rings)

THE COURT: Excuse me.

MR. DE LEO: Your Honor?

THE COURT: Yes.

MR. VAN AALTEN: This is Seth Van Aalten from Cole Schotz for the committee. I was going to wait until after the reply, but I'm happy to address the court now.

THE COURT: Why would you wait until after the reply?

MR. VAN AALTEN: I don't know.

THE COURT: Why would I give you the last shot?

MR. VAN AALTEN: Your Honor, the committee did file a joinder to the debtor's opposition to the TRO and that was at Docket No. 715. We are here today, Your Honor, fundamentally to address, as Ms. Greenblatt said, inter creditor issues among the term lender group and Peak.

Given the stakes, Your Honor, none of that can or should stand in the way of a sale closing. It is not only necessary to preserve jobs in a go-forward business for our constituents, Your Honor, but one that I think is needed immediately without any interruption in order to fund this business in the near term including December rent obligations.

To be honest, Your Honor, I'm not sure how these inter creditor issues managed to go unresolved through the final DIP and sale hearings, each of which was predicated collectively on bridge financing to a sale from the buyer

group and a credit bid from the lender group. It's unusual, I think, for these inter creditor issues to go unresolved to this point, but it's also something, as the debtors indicated in their reply that we had no insight into. That is because whatever inter creditor terms are ultimately reached between the buyer and lender groups it's really no moment to our constituents.

What was a moment for the committee, Your Honor, was that the sale order be entered permitting the buyer group to purchase the business and the lender group to supply its credit bid to reach that result. That is what the sale order provides, Your Honor. And all conditions to closing were thereafter satisfied.

To be clear, we are in no way thrilled by the fact that NewCo won't be capitalized to the extent of previous representations including adequate assurance packages that went out to landlords. What we have heard from the landlord community, and this isn't a one size fits all response, Your Honor, it's a response that is unique to the facts and circumstances of this case, and I think the commercial environment we have all had to endure over the past year.

The response is that we can't let perfect be the enemy of good. We don't have a buyer that is willing to recapitalize this business with $47 million. We do have a buyer that is willing to capitalize it with $5 million. And

in view of the significant DIP financing that has already been provided I think we have a buyer with quite a lot to lose here were this business not to be adequately capitalized moving forward.

It's not perfect. It's not even what was represented. I am certain this would be a far greater issue, Your Honor, in a more competitive commercial environment, but under the circumstances of today, from the committee's perspective it's good enough because there is no other buyer here and there is no alternative to this transaction. So, Your Honor, we would respectfully request the denial of the TRO motion.

I am happy to answer any questions Your Honor might have.

THE COURT: No. I have no questions, Mr. Van Aalten. Thank you very much.

MR. VAN AALTEN: Thank you, Your Honor.

THE COURT: Ms. Maloney, would you care to reply?

MS. MALONEY: Thank you, Judge Sontchi.

It seems to be that the creditors committee and also the debtors would have you exercise your authority to achieve the equities of completing the sales transaction and removing this company from bankruptcy, but to do that while ignoring a negotiated sale order that you entered and which provides certain protections and certain closing conditions

that have simply not been satisfied is not appropriate. We do not disagree with the argument that this closing should go forward, but it should go forward under the terms that were agreed to under the sale order.

This point that Ms. Greenblatt made is the same point that was the same point that was made in the debtor's opposition and that is this rhetorical question that if the ad hoc group has not contributed the credit bid consideration what is the basis of their equity stake in the NewCo. It seems to be that in the debtor's mind the ad hoc group contributed its credit bid at the time the APA was signed. Of course, we're not parties to the APA and I don't understand in what scenario we would have given up that valuable private property right in exchange for nothing because we didn't. The credit bid is conditioned on a number of closing conditions that Peak simply has not met.

It can't be true that the ad hoc group has committed its credit bid on behalf of a transaction that is now being changed midstream due to this tortured reading of Paragraph (x) of the sales order. And, in fact, in the debtor's objection they admit as much. They say that the ad hoc group has not yet received the equity in the NewCo. That is Paragraph 21 where it discusses the "contemplated equity." Paragraph 7 where they say twenty percent of the equity in NewCo is being reserved for distribution of the prepetition

lender.

Our only request here is that Your Honor clarify for all of the parties that, in fact, there has to be a contribution of the credit bid at the direction of the ad hoc group by the agent in exchange for consideration. That has not happened yet. The credit bid is not currently part of the purchase price that is required under the APA. That fact is acknowledged in the declaration of Peak's CFO.

So, Your Honor, we really appreciate your time and I certainly appreciate your willingness to let us brief this issue on such short notice and over the holiday. I am happy to answer any questions that you may have.

Thank you.

THE COURT: Thank you, Ms. Maloney.

Thank you everybody. A couple, sort of, preliminary comments and then I will get into the meat of it.

First, dealing with Mr. Buchbinder's observation which was certainly not lost on me when I read the documents. I sort of set this up like this, maybe inappropriately by basically asking for a TRO in what has mostly turned into a motion for reconsideration or clarification of an order as opposed to an injunction.

The debtor -- excuse me, the movants have relied on 105(a) which is a tricky section and one to be dealt with very carefully, generally speaking, to seek some sort of

injunctive/clarification relief with regard to the issues before the court.

You know, 105 is interesting, and I could spend all day about this, but I'm not going to bore you with it because this is, really, I think a preliminary matter that doesn't ultimately effect what I am going to do. It is there to make it clear that this court has equitable powers, but equitable powers require enabling statutes and rules, and Federal Courts which have combined law and equity for well over -- well, maybe not well over a century, but very close make it clear when exercising the equitable powers for injunctive relief you have the follow the federal rules.

The federal rules of civil procedure set forth in Rule 65 set forth the rules governing that and that's been incorporated by 7065 and, of course, 7001 says that if you are seeking injunctive relief you need an adversary proceeding. So, I think it is actually inappropriate to proceed under 105 under an equitable argument without complying with the other rules that address injunctive relief in the exercise of those equitable powers which are 7001 and 7005.

If you were seeking something like a more traditional equitable remedy, say, out of restitution like in accounting I don't think you would necessarily need an adversary proceeding to seek an accounting. Obviously, a

declaratory judgment, which is also a quasi-equitable remedy, is also -- it requires an adversary proceeding because its 7001, it specifies. That is how many angels there are on the head of a pin.

Since I teach a class in remedies at the local law school I could talk a lot about this, but I'm not going to talk about it anymore because I am going to ignore it because ultimately I am going to rule in favor of the debtors and it's moot.

It is -- we've sort of got a conundrum here and I think -- well, not sort of. We have a conundrum here and I think the parties, to a certain extent, are talking past each other based on the fact that we're in a situation that I don't think the plain meaning of the sale order or the APA contemplates which is the term lender refusing to make the credit bid.

So, we're not starting from zero here. We have to go way back. This is a transaction that has developed over time and a lot of things have happened relying on this transaction that have affected parties in interest and the debtor, and have put us in a place to allow the prepetition -- I'm just going to say to allow the term lenders not to credit bid at this point in the case would be extremely detrimental to the interest of the debtors, its creditors and its parties in interest. I think it would be inconsistent

with the documents and the behavior of the parties going forward.

Clearly there is a dispute between, and I'll call it, Peak and the term lenders over the capitalization of the buyer. There were certainly, I don't know if they were representations, but there were statements. Ms. Maloney didn't get into this and I didn't invite her too, but I am aware of this generally speaking from reading the documents that this is a disappointing result for the term lenders in their minds that the capitalization is so thin.

This is certainly a time that I would understand being very concerned about capitalization being thin in a business like this and really any business. We've come a long way down this road to get here and to pull the rug out from under the debtors at this point, and the creditors, and parties in interest based on a view between non-debtors over the capitalization structure of the buyer using a refusal to make a credit bid that is clearly contemplated under the agreement, the mechanism for undoing the transaction I think is inappropriate.

Clearly the credit bid has been contemplated from day one. And I believe that Ms. Maloney is correct that the document reads that a credit bid has to be made by the buyer and her position is that the term lenders have never transferred to the buyer the right to make that credit bid.

There is some support, at least from the buyer, saying look, yeah, I don't have that authority right now.

I think it's too late not to grant that authority. I think that the sale order makes it clear that the preliminaries, i.e. the transfer of the right to credit bid, have already occurred and we're not awaiting that happening. I think it's actually quite reasonable to reach the resolution that this happened at the APA. Of course, it could be undone if the APA never closed, but this was a fundamental part of the bid that was the stalking horse bid that went out for competing bids, the auction was canceled, court had a sale hearing, nobody objected, nobody raised this issue, I entered an order, we're going to closing and now all of a sudden the term lenders say we never gave the authority for the buyer to credit bid, it's just too late.

It's not contrary to my reading of the documents. If they have that authority not to make that contribution. I think the documents made it clear that that contribution already -- and to the extent that it didn't already occur pursuant to some sort of documents being exchanged among the parties I deemed it as a matter of law and to the extent I have to exercise equitable power here it did occur.

So, I am finding that the buyer has the authority to credit bid. You can go to closing and the buyer can credit bid the debt. I think that is consistent with the

documents. It's certainly consistent with the course of dealing. It's consistent with the fact that we all went down a long road here and spent a lot of money and bet the future of this company.

I mean it's simply inequitable, too late to allow the term lenders to pull that out from under the debtors and not to give that authority for the credit bid. So, I am going to deny the motion. I will have to figure the order out a little bit. I will put a finding in the order to the effect that the court order, not a finding, but an order that the court order that the credit right -- the right to credit bid has been transferred to the buyer and the buyer has authority to make that credit bid and the closing can go forward.

MS. MALONEY: Thank you, Your Honor.

THE COURT: Thank you.

I will get that order as soon as I can. We're slow because of COVID, of course, but we will get it on the docket as soon as possible.

Thank you everybody for your efforts. I truly appreciate it.

Any final questions or comments before we turn off?

MS. GREENBLATT: Nothing from the debtor, Your Honor.

THE COURT: All right. We're adjourned. Have a great day everybody.

(Proceedings concluded at 10:38 a.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski December 9, 2020
Mary Zajaczkowski, CET**D-531